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Legal Department

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Subject:— Opinions under the Bombay Prevention of Gambling Act 1887

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C O N T E N T S.

Legal Department File No. O. Gambling /492

Sr. No.	D.No.	Subject.	Pages.
		Opinions under the Bombay Prevention of Gambling Act, 1887.	
1.	Judgement.	Criminal Revision Application No. 593 of 1945 in the High Court Bombay. Imperator V/S Dasonalli Mahomedalli offences under sections 4(a) and 5	1-4
2.	D.No.10504. 16.9.49.	Section 3. Whether Government can refuse the renewal of license for horse race betting granted by the Miraj Junior State without incurring any liability for payment of compensation.	5-8

Judgement recorded by the High Court in Criminal Revision Application No.593 of 1946 in the case of Imperator Vs. Hasanalli Monomedalli.

The Government Pleader for the Crown.

Mr. G.S.Talpade for the Accused (appointed.)

Coram: Stone C.J. and Lokur J.

16th February 1947.

Judgment (Per Stone C.J.):-

This is a reference by Government asking for enhancement of the sentence of the one month's rigorous imprisonment and a fine of Rs. 100 under section 4(a) of the Bombay Prevention of Gambling Act, 1887 and a fine of Rs 25 or in default one week's rigorous imprisonment under section 5 of that Act, passed on the accused on the 13th August 1946 by Mr. A.I. Rahimtoola, Presidency Magistrate, Sixth Court, Mazgaon. The former section of the Gambling Act is directed against the keeper of a common gaming house and the latter against any person found in such place.

The accused from the outset has not denied the offences. In his statement before the Magistrate he said:-

> "I admit that I received bets as alleged. .....I am a hunchback and for want of any other work I was carrying this business on a small scale. I have an old mother dependent on me. "

These facts are not challenged by the prosecution, nor has any attempt been made on behalf of the accused in this Court to challenge the validity or the correctness of his convictions. What is urged by Mr. Palpado on his behalf is this. It is said that it is not just or fair that Government should demand a heavy sentence against a poor man driven to keep a common gaming house in a small way because he cannot get work owing to his physical deformity, when Government does not prosecute the rich, who it is alleged flagrantly break the gambling laws in numerous Clubs throughout this City. Whether there are such places or not we have no judicial knowledge; but the Government pleader makes denial of their existence. What he says is, that such places hav

alwa... - ...sidered to be outside the prohibitions of the Gambling Act on the ground that they are Clubs, and therefore not open to the public. On the one hand it would obviously not be right for this Court to interpret the law on such an important question, affecting as it may the lives of ak a large number of citizens, on any hypothetical basis and without any propery proof of the facts, on other hand, the question raised is germane to the reference before us, because, the fixation by a Judge or A Magistrate of the quantum of sentence is, within the ambit of the maximum sentence which the law prescribes, a matter of discretion in the exercise of which certain considerations have to be taken into account , and in our opinion, in cases in which Government moves this Court for the enhancement of a sentence, that is to say asks this Court of Criminal Appeal to interfere with the discretionary powers already exercised by a Magistrate, the fact whether the law is being evenly administered by the executive Officers of Government, is a relevant consideration. We have already had occasion in other appeals to this Court, to remark, that the law is not respector of persons. There is no such thing as one law for the rich and another for the poor, there is no such thing as a privileged class measured by its opulence or its respectability . In the eye of the law, and the law applies to all, unless in the particular statute concerned exceptions are made, but there are no such exceptions in the Bombay Prevention of Gambling Act, It follows that if Mr. Talpade's assertions are well founded , we may have to consider whether we should enhance the sentence in this case. Accordingly we shall stand this reference over in order to give the accused an opportuinty of filing a complaint before an authorised police Officer as required by the provisions to section 6 of the Act, so that the

Police Officer may upon such inquiry as he may think fit take the necessary action under that section. If a test case ensues it will in effect be linked with the reference before us, and therefore without expressing any opinion on the law, it will be convenient to state precisely what the point is.

The allegation made is that there are Clubs in this City in which there is a place or room set apart for the playing of cards for money, and that such games regularly take place and that the games played for money are not games of pure skill (see section 13 of the Act) and that instruments of gaming are kept and used in such places or rooms (see sections 3 and 7 of the Act). Therefore, if any profit or gain (see the definition of "common gaming House" in section 3 of the Act) is made from such place or room, be it by a charge for cards or as table money or for refreshments or by some subscription or otherwise, it is suggested that the place or room is a common gaming house. Accordingly it is asserted that the "keepers" of such Clubs are liable to be prosecuted under section 4 of the Act and all the persons present and found therein ought to be prosecuted under section 5. Further it is said that it matters not that the place or room is in a private members' Club, for in that event the Managing Committee of the Club are still liable prosecution as "Keepers" (See Denials v. Pinks, (1931) 1K.B. 374). We express no opinion whether this English case is in point. On the other hand the Government Pleader draws the attention of this Court to an observation of Mr. Justice Broomfield in Emperor v. Kallippa Gurappa (1939) 41 Bom. L.R.970 at p. 973 in which the learned Judge said :-

"The learned Sessions Judge has observed, in the cour

> of his judgment, that the game is just like auction or contract bridge played in respectable clubs. He has however, omitted to observe two very important distinct The first is, that in the case of a club it is not usua for a charge to be made for the profit and benefit of th owner or occupier of the premises, In the present case it is proved that all those partiespating in the game pa four annas for the benefit of accused No. 1, the owner o the premises. The other point is that in the case of a the place is not open to any member of the public, but o to members of the club and perhaps their guests. The fa here clearly bring the case within the definition of a common gaming house in section 4."

The observation as far as it concerns Clubs is only obiter dictum, for it was uncessary for the decision of that case, and such dictum although entitled to the utmost respect is not a decision which is binding on this Court or on any inferior Court. Be it observed, as has been pointed out in Jenks v. Turpin 13 Q.B.D. 505, the words are " a common gaming House" and not " a public gaming House."

For 60 years the Bombay Pregention of Gambling Act, 1887 has been the law,but it appears that no decision which embraces the points now raised has ever been made by this Court. The words of Mr. Street in his welknown book on the law of gaming would, it seems, be equally applicable to Indian lawyers as they are to those of England; "there is on some subjects a touching absence of curiosity among English lawyers.

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> Of the propriety or justice of that act"(here the refusal to recognise) "neither the Court below nor the Judicial Committee have the means of forming or the right of expressing if they had formed, any opinion. It may have been just or unjust, politic or impolitic, beneficial or injurious, taken as a whole, to those whose interests are affected. These are considerations into which their Lordships cannot enter. It is sufficient to say that, even if a wrong has been done, it is a wrong for which no municipal court of justice can afford a remedy."

These observations were quoted with approval in Cook v. Sprigg. As stated above, the renewal of the licence for the unexpired period would be in contravention of the provisions of the Bombay Prevention of Gambling Act, 1887, and the licence which has been granted by the Miraj Junior State is in the nature of a concession which this Government can refuse to recognise without being in any way liable to pay compensation.

Sd/- P.M.Lad.
15.9
Remembrancer of Legal Affairs.

V.M.D./6-6
4c.

U.R to P.J.S.D No 10504 of 16-9-49

Office of the R.L.A.

It appears that the Miraj Junior State has given a licence to Messrs. Sankpal and Bhonsle for house race betting for a period of three years from 1.8.1947 on a fee of Rs. 3,500 per year. The licensees have now asked for a renewal of the licence af for the unexpired period of one year. The Special Officer, Political & Services Deptt., considers that Government can refuse to grant the licence without incurring any liability for payment of compensation. ~~xhhhx~~ The Remembrancer of Legal Affairs is requested to advise.

The licence granted by the Miraj ~~M~~Junior State in the present case provides that it is exempted from the provisions of the Prevention of Gambling Act. The licence was granted by Rajasaheb in exercise of his inherent powers. On the integration and the final merger of this State. ~~Hahax~~ in the Province of Bombay, the Bombay Prevention of Gambling Act, 1887, has been made applicable to the area comprised in this State. Under section 3 of that Act, the horse race betting, for which the licence has been issued in the present case, is prohibited. Consequently, the renewal of the licence for the unexpire period as requested would be in contravention of the Bombay Prevention of Gambling Act, 1887. It is a general principle that, if a sovereign State has acquired the territory or property of another soverei State, whether by conquest or annexation, or by the suppression of a revolutionary government, it cannot b made liable in municipal courts for the acts of its predecessor, nor can privileges or rights obtained from the predecessor be enforced by action against the succes (see Halsbury's Laws of England, Vol. 26, p.255; Cook v. Sprigg (1899) A.C. 572 P.C.) The same principle has been stated in the case of Secretary of State for India in Council v. Kamachee Boye Sahaba and cited in Dass v. Secretary of State for India in Council: